

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OMG ACCESSORIES LLC,

Plaintiff,

-against-

MYSTIC APPAREL LLC and KOHL'S
DEPARTMENT STORES, INC.

Defendants.

Case No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff OMG Accessories LLC ("OMG"), by its attorneys, Pryor Cashman LLP, as and for its Complaint against Mystic Apparel LLC ("Mystic") and Kohl's Department Stores, Inc. ("Kohl's"), alleges as follows:

JURISDICTION AND VENUE

1. This is an action for copyright infringement arising under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* Jurisdiction in this Court over these claims is proper pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) in that a substantial part of the events giving rise to the claims asserted herein occurred in this judicial district.

THE PARTIES

3. Plaintiff OMG is a New York corporation with its principal place of business at 10 W. 33rd Street, Suite 408, New York, New York 10001. OMG is engaged in the business of designing, marketing, manufacturing and selling consumer products including, but not limited to, handbags and accessories.

4. OMG has created an identity in the market for products bearing original and unique, custom designed prints created, at great expense to OMG, by its own internal design team. OMG is widely regarded as a chic lifestyle brand for fashion-forward kids, teens and other demographic markets.

5. Defendant Mystic Apparel, LLC is, upon information and belief, a limited liability company organized under the laws of the State of New York, with a principal place of business at 1333 Broadway, New York, NY 10018 and is engaged in business as a wholesaler of consumer products including, but not limited to, backpacks, lunchboxes, and other accessories. Upon information and belief, Mystic has offered for sale and sold products within this judicial district which infringe OMG's copyright interests and exclusive rights as set forth hereinafter.

6. Defendant Kohl's Department Stores, Inc. is, upon information and belief, a Delaware corporation with a principal place of business at N56 W17000 Ridgewood Drive Menomonee Falls, WI 53051 and is engaged in business as a brick and mortar and online retailer of consumer products including, but not limited to, backpacks, lunchboxes, and other accessories. Upon information and belief, Kohl's has offered for sale and sold products within this judicial district which infringe OMG's copyright interests and exclusive rights as set forth hereinafter.

Factual Allegations

OMG's Unicorn Pattern Design

7. OMG independently created and is the copyright proprietor in the copyrighted design entitled "Unicorn Pattern" (hereinafter the "Unicorn Pattern Design").

8. The Unicorn Pattern Design contains original material that is copyrightable subject matter pursuant to U.S. copyright law, and the Unicorn Pattern Design was published by OMG on or about September 15, 2017.

9. With respect to the Unicorn Pattern Design, OMG has complied in all respects with the Copyright Act of 1976, 17 U.S.C. § 101 *et. seq.* The Unicorn Pattern Design was duly registered for copyright protection in the United States Copyright Office under Registration Number VA 2-130-100 issued on June 5, 2018 (the “Unicorn Pattern Copyright Registration”). The Unicorn Pattern Copyright Registration is presently valid and subsisting, and OMG is the sole owner and proprietor of all right, title and interest in and to the Unicorn Pattern Design.

10. The Unicorn Pattern Copyright Registration and the Unicorn Pattern Design are collectively annexed hereto as **Exhibit A**.

11. Upon information and belief, commencing in or around 2019, Defendants Mystic and Kohl’s infringed OMG’s copyright interest in the Unicorn Pattern Design by offering for sale and selling backpacks and lunchboxes bearing a design copied or reproduced from the Unicorn Pattern Design. Images of the products available for retail via the Kohl’s website are annexed as **Exhibit B**.

12. Upon information and belief, Mystic had access to OMG’s Unicorn Pattern Design through OMG’s website, social media, showroom, and/or samples. Upon information and belief, Kohl’s had direct access to OMG’s Unicorn Pattern Design through OMG’s website, social media, and showroom, as well as due to Kohl’s previous purchase of OMG products bearing the Unicorn Pattern Design.

13. Mystic and Kohl’s have copied, reproduced, and sold items bearing OMG’s Unicorn Pattern Design without the permission, license, or consent of OMG.

FIRST CAUSE OF ACTION
(Copyright Infringement)

14. Plaintiff hereby repeats and realleges the foregoing paragraphs of the Complaint as if fully set forth herein.

15. Defendants Mystic and Kohl's actions constitute infringement of the Unicorn Pattern Design in violation of the Copyright Act, 17 U.S.C. §§ 101 *et seq.*

16. Plaintiff's Unicorn Pattern Design is an original work of authorship, copyrightable under 17 U.S.C. § 102.

17. Plaintiff's copyright in the Unicorn Pattern Design is registered with the United States Copyright Office under Registration Number VA 2-130-100, issued on June 5, 2018.

18. Plaintiff owns the copyright in and has the exclusive right to exploit and administer the Unicorn Pattern Design in the United States. As such, Plaintiff has the exclusive right to reproduce the Unicorn Pattern Design and sell items bearing the Unicorn Pattern Design.

19. As set forth above, Defendants Mystic and Kohl's have infringed OMG's exclusive copyright by reproducing and selling items including, but not limited, to backpacks and lunch bags, bearing the Unicorn Pattern Design.

20. In addition, upon information and belief, Defendants Mystic and Kohl's were aware of OMG's copyright in the Unicorn Pattern Design, and have willfully infringed upon the Unicorn Pattern Design in disregard of and with indifference to the rights of Plaintiff OMG.

21. As a direct and proximate result of the infringement by Defendants Mystic and Kohl's, Plaintiff is entitled to damages in an amount to be proven at trial, including its actual damages and Defendants' profits attributable to the infringement, or statutory damages, pursuant to 17 U.S.C. § 504.

22. Plaintiff is further entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

23. As a direct and proximate result of the foregoing acts and conduct, Plaintiff has sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Defendants

Mystic and Kohl's will continue to infringe Plaintiff's rights in the Unicorn Pattern Design. Plaintiff is entitled to permanent injunctive relief.

WHEREFORE, Plaintiff OMG Accessories, LLC demands judgment against Defendants as follows:

A. That Defendants be adjudged to have infringed Plaintiff's copyright interest in its work known as Unicorn Pattern Design;

B. That Defendants be permanently enjoined from infringing the Unicorn Pattern Design in any manner and from manufacturing, promoting, importing, selling, marketing, or otherwise disposing of any product bearing a design which infringes the Unicorn Pattern Design;

C. That Defendants be required to pay Plaintiff, at Plaintiff's election before the entry of final judgment, either (i) such damages that Plaintiff has sustained in consequence of Defendants' infringement of the Unicorn Pattern Design, as well as all gains, profits, and advantages derived by Defendants from such acts of infringement, or (ii) such statutory damages as the Court shall deem just and proper under the provisions of the Copyright Act;

D. That Defendants be required to pay to Plaintiff the costs of this action, including attorneys' fees; and

E. That the Court award Plaintiff any and all further relief as the Court may deem just and proper.

Dated: New York, NY
December 18, 2019

PRYOR CASHMAN LLP

By: /s Michael Adelman
Kenneth A. Schulman
Michael B. Adelman
PRYOR CASHMAN LLP
7 Times Square
New York, NY 10036
Tel: (212) 421-4100
Fax: (212) 326-0806

Attorneys for Plaintiff OMG Accessories LLC